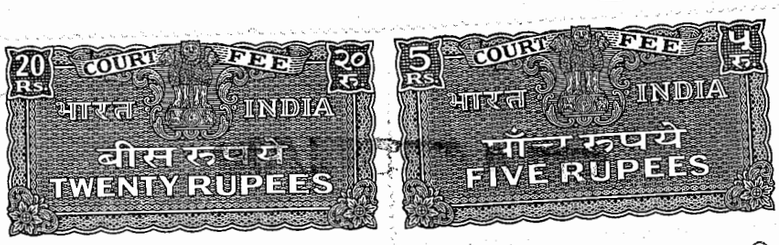
(3)




C.F. 25/4

S.D

IN THE HIGH COURT OF JUDICATURE MADHYA PRADESH: JABALPUR

WRIT PETITION NO. 438 /1997

Alok Kumar Soor, Accounts Officer, Municipal Council, Jagdalpur, S/o Shri K.P.Soor, aged 41 years. .. PETITIONER

- VERSUS -

Attested
ARCS 20/6/06

1. State of Madhya Pradesh, Through: Secretary, Local Self-Government.

2. Director, Local Self-Government, Madhya Pradesh, Bhopal.

Withdrawn 22/

3. Chief Municipal Officer, Municipal Council, Jagdalpur.

4. Chief Executive Officer, Sub Area Development Authority, Chirimiri. .. RESPONDENTS

27-1-97 - P. Shankaran

PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 438 of 1997

Petitioner: Alok Kumar Soor

Versus

Respondents: State of Madhya Pradesh others

**Single Bench**: Hon'ble Mr. Justice **Satish K. Agnihotri.**

---

Shri P. S. Koshy, Advocate for the petitioner.

Shri A. S. Kachwaha, Govt. Advocate for the respondents No. 1 and 2.

Shri Sanjay K. Agarwal, Advocate for the respondents No. 3 & 4.

---

ORDER

( 4th December, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner was appointed as Assistant Accountant/Head Assistant in the year 1976. In July, 1992 the petitioner was promoted to the post of Assistant Accounts Officer and on 25.11.1992 (Annexure A/5) the petitioner was promoted to the post of Accounts Officer.

2. Thereafter, in July, 1996 the office of the Deputy Director, Audit raised objection to the promotion of the petitioner on the post of Accounts Officer for the reason that there was no sanctioned post of Accounts Officer. As such, the difference of the amount of the salary for the post on which the petitioner was working i.e. Assistant Accounts Officer and the post on which the petitioner was promoted w.e.f. 25.11.1992 i.e. Accounts Officer was to be recovered.

3. Learned counsel for the petitioner submits that the petitioner submitted his representation to the audit objection on 4.11.1996 (Annexure A/6). The petitioner has filed this petition for quashing of the orders dated 29.7.1996 (Annexure A/1), 7.11.1996 (Annexure A/2), 17.10.1996 (Annexure A/3) and 23.12.1996 (Annexure A/4) whereby recovery of the payments made to the petitioner, consequent to his promotion on the post of Accounts Officer w.e.f. 25.11.1992, has been directed by the respondents after due enquiry and calculation.

4. Learned counsel for the petitioner submits that when the petitioner was promoted on the post of Accounts Officer, he was posted at Special Area Development Authority, Chirmiri. Thereafter, the petitioner was transferred to Jagdalpur, where he was working since 3.2.1996. He further submits that the promotion of the petitioner was made as per the Rules and Circulars of the Government and since 3.2.1996 the petitioner was posted at Jagdalpur, against vacant post of Accounts Officer. He next submits that the petitioner has actually performed his duties of the post of Accounts Officer. Thus, the respondents are not entitled to recover any amount which was paid to the petitioner for performing the duties on the post of Accounts Officer.

5. On the other hand, learned counsel for the respondents opposed the submissions made by learned counsel for the petitioner.

6. The Supreme Court in the case of **Sahib Ram Vs. State of Haryana and others**[1] in para 5 has held as under:-

> *"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances*

*the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant......"*

7. The Supreme Court in the case of **Purshottam Lal Das & Others v. The State of Bihar & Others**[2] after considering the decisions of the Supreme Court in the cases of **Sahib Ram v. State of Haryana**[1], **Bihar State Electricity Board and Anr. V. Bijay Bhadur and Anr.3**, and **State of Karnataka and Anr. V. Mangalore University Non-teaching Employees' Association and Ors.**[4] has observed that no recovery shall be made from the amounts already paid in respect of the promotional posts. However, no arrears or other financial benefits shall be granted in respect of the concerned period.

8. This Court in the case of **Vidyadhar Tiwari Vs. State of Chhattisgarh & others**[5] has held that for the excess payment, if any, made to the petitioner, he was not at fault and the amount received by him might have been used by adjusting himself accordingly treating the same as his salary. At this stage, directing recovery of the alleged excess amount from the pensionary benefits of the petitioner will not be just and proper.

9. In the present case, the petitioner was promoted on the post of Accounts Officer on 25.11.1992. Thereafter the petitioner was transferred also from one area to other area i.e. on 3.2.1996 the

petitioner was transferred to Jagdalpur and worked on the vacant post of Accounts Officer. The petitioner has been continuing as Accounts Officer, even today. Thus, I am of the considered opinion that there was no fault on the part of the petitioner, on the other hand, admittedly, the petitioner had performed his duties on the post of Accounts Officer. There is no occasion for directing for recovery of amount from the petitioner.

10. In view of the foregoing, the petition is allowed. The impugned orders dated 29.7.1996 (Annexure A/1), 7.11.1996 (Annexure A/2), 17.10.1996 (Annexure A/3) and 23.12.1996 (Annexure A/4) are quashed. There shall be no order as to costs.

**Sd/-**
**Satish K. Agnihotri**
**Judge**

---

{ 1995 Supp (1) S.C.C. 20[1]},
{ JT 2006 (12) SC 581[2]}
{ 2000 (10) SCC 99[3]},
{ JT 2002 (2) SC 419; 2002 (3) SCC 302[4]}
{ 2006 (1) M.P.H.T. 105 (C.G.)[5] }

Thakur